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Date: June 1, 1990

To: All Wisconsin Home Health Agencies

From: Larry Tainter, Director
Bureau of Quality Assurance

Subject: Issues from March 21, 1990 Wisconsin Homecare Organization Meeting

On March 21, 1990, members of the bureau attended a question and answer session in Wisconsin Dells. Six areas of concern seemed to generate the most questions from the audience. The following information is being distributed for the benefit of agencies who were not in attendance and also to clarify some of the responses given at that meeting.

Patient Rights

§484.10 Condition of Participation: Patient Rights

Requirement: All Medicare-certified home health agencies must provide the patient with a written notice of the patient's rights in advance of furnishing care to the patient or during the initial evaluation visit before the initiation of treatment (484.10(a)(1)). All Home Health Agencies (HHA's) must inform potential patients, orally and in writing, about the costs of the items and services to be provided, the availability and extent of coverage for those items and services, and any charge for such items and services for which the individual is responsible. This information must be provided in advance of furnishing care to the patient (484.10).

The House Select Committee on Aging found that many Medicare beneficiaries enter into agreements with HHA's with the expectation that all services will be paid for through the Medicare program. The committee found that patients had little knowledge of either their own obligations under Medicare law, or of the availability of potential coverage of home health services through other federal programs. Therefore, the committee believed it was in the best interest of both the beneficiaries and the federal government that information about coverage of, and charges for, home health services be made available to those contracting for such services. The regulations further require that the patient must be notified of their right to have their property treated with respect; of their right to exercise their rights as a patient of the HHA; that the patient's family or guardian may exercise the patient's rights when the patient has been judged incompetent (484.10(b)); that the patient has the right to confidentiality of the clinical records maintained by the HHA, along with advising the patient of the HHA's policy for disclosure of clinical record information (484.10(d)). Patients must be notified of their right to voice grievances regarding the treatment or care that is (or fails to be) furnished or regarding the lack of respect for property by anyone furnishing services on behalf of the HHA and must not be subjected to discrimination or reprisal for doing so. The HHA must investigate all complaints made by the patient or their family/guardian and must document both the existence of the complaint and the resolution of the complaint (484.10(a)). The patient also has the right to be informed and participate in planning their care and treatment; the patient must be advised in advance of the discipline that will furnish care, and the frequency of visit along with any changes in the plan of care, before the change is made (484.10(c)). The HHA must also advise the patient in writing of the telephone number of the State Home Health Hotline, the hours

of operation and that the purpose of the hotline is to receive complaints or questions about HHAs. (484.10(f)).

Review Process: The agency must provide documentation that they have complied with the requirements of these regulations. The HHA must demonstrate that the patient was provided with written documentation of their rights with particular emphasis on notification of patient liability and changes in liability. If there was a change in the frequency of services, there must be documentation in the clinical record that the patient was notified of the change. Patients will be interviewed regarding their understanding of their rights. For those patients with reduced mentation, their families/guardians will be interviewed regarding their understanding of their rights. The patient/family will be asked if the HHA informed them of how the services they received would be paid for. Due consideration will be given to the patient's/family's ability to understand and retain this information. The patient/family will be asked to show the interviewer the HHA's written notice about the State Hotline; they will be asked when they would use it, what the hours of operation are and what he/she could expect as a result of its use.

Supervision of Home Health Aide

§484.36 Condition of Participation: Home Health Aide Services
(d) Standard: Supervision

Requirement: "The registered nurse makes a supervisory visit to the patient's residence at least every two weeks, either when the aide is present to observe and assist, or when the aide is absent, to assess relationships and determine whether goals are being met. If a patient is receiving only skilled therapy services and home health aide services, a skilled therapist may make the supervisory visits at least every two weeks, in lieu of a registered nurse."

Review Process: A two-week supervisory visit is only required by patients if the patient is under a skilled services plan of care. It is not necessary for two-week supervisory visits to be conducted by home health agencies for patients not requiring skilled services or for patients of personal care agencies. Patients who are medically stable and only require assistance with personal care must be supervised by an R.N. every 60 days.

If an R.N. is visiting the patient and is utilizing the nursing process in the execution of general nursing procedures in the maintenance of health, prevention of illness or care of the ill, then his/her acts shall be considered to be skilled nursing services. The nursing process consists of the steps of assessment, planning, intervention and evaluation, as defined in the Wisconsin Nurse Practice Act (N6.03 Standards of Practice for Registered Nurses). If the patient is "stable" but requires a skilled nursing procedure on an intermittent basis (e.g., indwelling catheter change monthly), this act would utilize the nursing process (intervention). "Intervention is the nursing action to implement the plan of care by directly administering care or by directing and supervising nursing acts delegated to R.N.s, L.P.N.s, or less skilled assistants." (N6.03(d).)

The supervisory visit by the RN must be documented to reflect that relationships were assessed, goals were being met and whether continued home health care is appropriate.

Contracted Services

§484.4 Condition of Participation: Organization, services, administration
(f) Standard: Personnel under hourly or per visit contracts

Requirement: "If personnel under hourly or per visit contracts are used by the HHA, there is a written contract between those personnel and the agency that specifies the following:

(1) That patients are accepted for care only by the primary home health agency,

(2) The services to be funished,

(3) The necessity to conform to all applicable agency policies including personnel qualifications,

(4) The responsibility for participating in developing plans of care,

(5) The manner in which services will be controlled, coordinated, and evaluated by the primary agency,

(6) The procedures for submitting clinical and progress notes, scheduling of visits, periodic patient evaluation, and

(7) The procedures for payment for services furnished under the contract."

HSS 133.06(4)(a) Orientation

Requirement: "Prior to beginning patient care, every employee shall be oriented to the agency and the job for which he or she is hired, with the orientation to include:

1. Policies and objectives of the agency;

2. Information concerning specific job duties;

3. The functions of health personnel employed by the home health agency and how they relate to each other in providing services;

4. Information about other community agencies, including emergency medical services; and

5. Ethics, confidentiality of patient information, and patients' rights."

HSS 133.19(2). "Qualifications of contractors. All providers of services under contract shall meet the same qualifications required of practitioners of the same service under the terms of this chapter."

HSS 133.06(4)(d) Health

"1. Physical health of new employes. Every employe having direct patient contact shall be certified in writing by a physician or physician's assistant as having been screened for tuberculosis infection and found free from clinically apparent communicable disease within 90 days before beginning work."

HSS 133.19 Services under contract.

"(1) Terms. A written contract shall be required for health care services purchased on an hourly or per visit basis or by arrangement with another provider. The contract shall contain:

(a) A statement that patients are accepted for care only by the primary home health agency;

(b) A list of services to be provided;

(c) Agreement to conform to all applicable agency policies including personnel qualifications;

(d) A statement about the contractor's responsibility for participating in developing plans of treatment;

(e) A statement concerning the manner in which services will be controlled, coordinated and evaluated by the primary agency; and

(f) Procedures for submitting clinical and progress notes, scheduling visits, and undertaking periodic patient evaluation.

Review Process: The HHA must provide documentation that ensures that the contractor agrees to conform to the policies of the agency and provides services in accordance with the plan of care. Persons providing services under a contract with a home health agency must demonstrate that they have been tested for TB within 90 days of beginning employment with a home health agency, and have been found to be free from clinically apparent communicable disease. Additionally, all HHAs must furnish documentation that contracted home health aides have met minimum competency requirements, effective August 14, 1990, and further that a performance review was completed no less frequently than every 12 months. Additionally, the HHA will be required to furnish documentation that the home health aides have received 3 hours of inservice training per calendar quarter under the supervision of a qualified RN. Documentation of current licensure on those employees for whom licensure is required must also be furnished.

Employee, as defined by statute, ILHR 101.01(2)(a) means "Every person who may be required or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, or to go or work or be at any time in any place of employment."

Discharge of Patients

HSS 133.09 Acceptance and Discharge of Patients.
(3) Discharge of Patients

Requirement: "A patient shall be discharged from services of the home health agency upon the patient's request or upon the physician's decision, and may be discharged for non-payment of fees except that a county or city agency, as provided in s. 141.10, Stats., may not deny a patient necessary services because of the patient's inability to pay for them. The agency shall recommend discharge to the physician and patient if the patient does not require its services or requires services beyond the agency's capabilities."

Review Process: Documentation must be provided that identifies a patient request or physician's order for discharge, or non-payment of fees resulting in discharge.

The agency should determine, as part of the initial home visit assessment process, whether social and environmental hazards exist (drugs, weapons, lack of social service support, lack of support systems, etc.). If the agency identified serious problems that would pose a threat to the health and safety of their employees, there would be no obligation to admit the patient. If the problems arose after admission and neither the physician nor the patient will authorize discharge, you may request a waiver of this rule from the Bureau of Quality Compliance. Requests for waivers should be accompanied by the HHA's initial assessment of the patient, documentation of physician and patient refusal to authorize discharge and supporting documentation of the events leading to a request for waiver. It should be understood that most physicians, given serious life-threatening behavior or environmental hazards, would sign a discharge order and make appropriate referrals. If you are working with physicians who would not accommodate a discharge order under these circumstances, perhaps a review of your concerns with the physician, or alternately a review of your policies as they relate to acceptance of referrals from that physician would be appropriate.

Clinical Record Review

§484.52(b) Standard: Clinical record review.

Requirement: "At least quarterly, appropriate health professionals, representing at least the scope of the program, review a sample of both active and closed clinical records to determine whether established policies are followed in furnishing services directly or under arrangement."

Review Process: A 1987 federal Health Care Financing (HCFA) program letter clarifies: "If a home health agency offers physical therapy or speech pathology services as part of its scope of services, then professionals from these disciplines should participate in the record review. While this may result in professionals doing some self-review, other professionals are also reviewing and discussing these records as well as the agency's overall policies to determine if these policies are being followed. The purpose of the clinical record review is not to serve as a peer review process, but rather to determine and assure that services provided are appropriate and adequate, and that the agency's established policies are followed in providing services. Each reviewer uses his professional knowledge in completing this activity and, therefore, we do not feel that a therapist participating in the review of records of patients receiving other services is a problem."

Federal interpretive guidelines suggest that an "appropriate sample includes at least 10 percent of each service offered by the HHA". This suggestion serves merely as a guideline and would not preclude your agency from establishing a policy of quarterly clinical record review that you feel actively promotes the collaborative planning and intervention required to ensure quality home health services while moving the patient to his/her maximum functional capacity.

These quarterly reviews may be conducted at a meeting of all participants or each participant can independently conduct their reviews and share their findings with the committee. All participants must review all records in the sample.

Medications

§484.18 Condition of Participation: Acceptance of patients, plan of care, medical supervision
Requirement: 484.18(a) requires the plan of care to include "medications and treatments". 484.18(c) requires that "drugs and treatments are administered by agency staff only as ordered by the physician. The nurse or therapist immediately records and signs oral orders and obtains the physician's countersignature. Agency staff check all medicines a patient may be taking to identify

possibly ineffective drug therapy or adverse reactions, significant side effects, drug allergies, and contraindicated medication, and promptly report any problems to the physician."

HSS 133,29(4) also requires that "drugs and treatments shall be administered by the agency staff only as ordered by the attending physician. The nurse or therapist shall immediately record and sign oral orders and shall obtain the physician's countersignature within 10 days". HSS 133.21(5)(f) requires that the medical record contain a "medication list and documentation of patient instructions."

Review Process: Documentation in the clinical record shall include a signed physician's order for all medications and treatments administered by agency staff. Additionally, medications that are self-administered or administered by family or other non-agency caregivers shall be included in the medication list in the clinical record. Medications that are self-administered or administered by non-agency staff that may be ineffective, or cause adverse reactions, significant side effects, drug allergies or may be contraindicated must be documented in the clinical record and immediately reported to the physician. A pharmacist should be consulted if the agency has questions regarding drug interaction.

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cc: -Wisconsin Homecare Organization
-Board on Aging and Long Term Care
-Wisconsin Counties Association
-Service Employees International Union
-BQC Staff
-Wisconsin Coalition for Advocacy
-George F. MacKenzie
-Tina Nye, Bureau of Health Care Financing
-SMS Committee on Aging, Extended Care Facilities & Home Health Care